

prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988]

§ 4.23 Transcript of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of transcripts to be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Hearings and Appeals employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents. If the reporting is done pursuant to a contract between the reporter and the Department of the Interior Agency or office which is involved in the proceeding, or the Office of Hearings and Appeals, fees for transcripts will be at rates established by the contract.

§ 4.24 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of an Appeals Board, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in other proceedings, the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except for documents or other evidence received or reviewed pursuant to § 4.31(d).

(b) *Official notice.* Official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988]

§ 4.25 Oral argument.

The Director or an Appeals Board may, in their discretion, grant an opportunity for oral argument.

§ 4.26 Subpoena power and witness provisions generally.

(a) *Compulsory attendance of witnesses.* The administrative law judge, on his own motion, or on written application of a party, is authorized to issue subpoenas requiring the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. Subpoenas will be issued on a form approved by the Director. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A

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witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) *Application for subpoena.* Where the file has not yet been transmitted to the administrative law judge, the application for a subpoena may be filed in the office of the officer who made the decision appealed from, or in the office of the Bureau of Land Management in which the complaint was filed, in which cases such offices will forward the application to the examiner.

(c) *Fees payable to witnesses.* (1) Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witness appears.

(2) Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party. This paragraph does not apply to Government employees who are called as witnesses by the Government.

§ 4.27 Standards of conduct.

(a) *Inquiries.* All inquiries with respect to any matter pending before the Office of Hearings and Appeals shall be directed to the Director, the Chief Administrative Law Judge, or the Chairman of the appropriate Board.

(b) *Ex parte communication*—(1) *Prohibition.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, there shall be no communication concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished

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to all other parties. Proceedings include cases pending before the Office, rulemakings amending this Part 4 that might affect a pending case, requests for reconsideration or review by the Director, and any other related action pending before the Office. The terms “interested person” and “person interested in the proceeding” include any individual or other person with an interest in the agency proceeding that is greater than the interest that the public as a whole may have. This regulation does not prohibit communications concerning case status or advice concerning compliance with procedural requirements unless the area of inquiry is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) *Sanctions.* The administrative law judge, board, or Director who has responsibility for the matter with respect to which a prohibited communication has been knowingly made may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why its claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; disciplining offending Office personnel pursuant to the Department’s standards of conduct (43 CFR part 20); and invoking such sanctions against other offending persons as may be appropriate under the circumstances.

(c) *Disqualification.* (1) An Office of Hearings and Appeals deciding official must withdraw from a case if circumstances exist that would disqualify a judge in such circumstances under the recognized canons of judicial ethics.